

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 484 of 1984

IN

SPECIAL CIVIL APPLICATION NO. 4084 OF 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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AMBICA IND. CO-OP SERVICE SOCIETY LTD

Versus

STATE OF GUJARAT  
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Appearance:

MR SH SANJANWALA for Appellants

MR BY MANKAD, ASST. GOVT. PLEADER for Respt No. 1, 2  
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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 23/11/98

ORAL JUDGEMENT (Per Patel, J.)

Appellants, original petitioners before the  
learned Single Judge being aggrieved by the order of

dismissal of Spl. C.A. No. 4084 of 1984, passed on 24th September 1984, have preferred this Letters Patent Appeal.

2. Appellant No.1 is an Industrial Co-Operative Service Society [hereinafter referred to as the Society], which was formed in the year 1973-74 for the purpose of upliftment of middle class enterprenuers. The Society-Appellant No.1, the Vendee, on one hand and the appellants No. 2 to 5, the vendors, on the other hand on 8.1.1975 entered into an agreement to sell the lands bearing Revenue Survey No. 162 and 163 situated at village Majura, Tal. Choryasi, Dist. Surat, a copy of which is produced at Annexure 'A' to the Special Civil Application. Another agreement to sell was also entered into between the aforesaid parties on 15.3.1975 for the land bearing Revenue Survey No. 160/1 of village Majura, a copy of which is produced at Annexure 'B' to the petition. Appellants No. 2 to 5 executed irrevocable power of attorney on 8.1.1975, vide Annexure 'C' to the petition, in favour of the appellant No.1-Society. The Society was put in possession of lands bearing the aforesaid Survey Numbers. The Society, in view of the provisions contained in the Urban Land (Ceiling & Regulation) Act 1976 (hereinafter referred to as the Act) submitted the form as required under section 6 (i) of the said Act pointing out that the lands were in their possession. Application for exemption under section 20 of the Act was filed before the State Government. It appears that the same came to be rejected on 7.3.1983, vide Annexure 'L' to the petition. On the basis of the order at Annexure 'L' dated 9.3.1983, competent authority passed an order, vide Annexure 'L', on 21.10.1983 holding that Shri Bipinchandra Sundarlal was not holding the land in capacity as an owner; He was merely a promoter of the Society and the form was ordered to be filed.

3. Being aggrieved by the aforesaid order, the appellants preferred Special Civil Application and the learned Single Judge held that the form filed by the appellant No. 1 under section 6 (i) of the Act has been finalised; the exemption has not been granted; the Society was not registered under the relevant scheme prior to February 17, 1976; and, the reasons given by the authority were just and proper. Learned Single Judge also held that even assuming that an application under section 20 of the Act is pending, the petition is grossly delayed in view of the fact that the final order has been passed in the year 1983.

4. It is required to be noted that in the instant

case documents, namely the agreements to sell were executed on two different dates. Appellant No.1 was put in possession of the lands in question and an irrevocable power of attorney was also executed in favour of the appellant No.1 on 24.2.1975. The Act has defined in section 2 (1) 'to hold' which reads as under :-

- (1). "to hold" with its grammatical variations, in relation to any vacant land, means,-
  - (i). to own such land; or
  - (ii). to possess such land as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under a hire purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities.

5. Relying on sub-clause (ii) of clause (1) of Sec. 2 of the Act, it was submitted that the appellant No. 1 was possessing the land in question under an irrevocable power of attorney and, therefore, the application was required to be taken into consideration in the spirit of law in which the Act came to be enacted.

6. It is required to be noted that there is no dispute that the lands bearing the aforesaid Survey Numbers are situated in an industrial zone and the appellant Society was seeking exemption for industrial use by middle-class persons. The lands were converted into industrial use by the appellants. From reading section 2 (1) quoted above, it is very clear that the appellant Society is holding the lands in question.

7. It is pointed out before us that under the Act not only the appellant No.1, but the appellants No. 2 to 6 also filled in the form under section 6 of the Act. The competent authority declared land admeasuring 69945.49 mtrs. as excess land by an order dated 26.10.1983 against which appeals were also preferred by appellants No. 2 to 6 individually and by a common order dated 25.9.1995, the appellate authority directed the competent authority to proceed further after the decision that may be rendered in the present L.P.A. On this ground, the appeal presented by the Society was also disposed of.

8. It appears from the decision rendered by the learned Single Judge that undue weightage was given to the fact that the Society was not registered under the relevant scheme for the purpose of industries prior to

February 17, 1976. As stated earlier, the proposed Society can be said to be a person holding the lands. So far as the registration aspect is concerned, Mr. Sanjanwala, learned counsel appearing for the appellants drew our attention to the decision of the Division Bench of this High Court in L.P.A No. 273 of 1987 [Paramount Industrial Co-Op. Society Ltd. & ors. vs. State of Gujarat & Ors] decided on 7th June 1992 wherein similar question was involved. The Society in that case was not registered prior to 28.1.1976. That was the ground taken by the authority deciding the application. It was pointed out that the appellant No. 1 was in possession of the said land and that it had paid the price of the same to the owners and an irrevocable Power of Attorney was executed with regard to the lands in question. The Division Bench held that "A person who is in lawful possession of the land can be regarded as a holder of the land under the Act, - thus the appellant was entitled to make an application under section 20 of the Act". The competent authority as well as the learned Single Judge have not taken this aspect into consideration.

9. It is pointed out in the aforesaid decision relied upon by Mr. Sanjanwala that "in view of the policy statement made by the Chief Minister, as alleged in the application and the granting of permission to another Society, even though it was not registered, the Government could not have rejected that application without affording an opportunity of hearing to the appellant No.1. Appellant No.1 could have pointed out to the Government that another Society, to which exemption was granted, was similarly situated and that in view of the facts and circumstances of the case, as pointed out in the application, hardship would be caused to number of persons, who have become the members of the Society. As the impugned order dated 4.4.1986 was passed without affording any opportunity to petitioner No.1, it deserves to be set aside". As the order dated 4.4.1986 impugned in the said L.P.A was passed without affording an opportunity of hearing to the petitioner No.1, the Division Bench set aside the order.

10. It is also required to be noted that the appellant Society was seeking assistance even of Gujarat Industrial Development Corporation prior to 1974 which is clear from the letter at Annexure 'C' to the affidavit dated 21.11.1998 sworn by the President of the Society and filed before the Court today. From the letter it transpires that the Society was in need of the land. The Regional Manager of GIDC Surat had called upon the Promoter of the Society by letter dated 15.3.1974 to

discuss the matter. The Registrar, Co-Op. Society, Surat has issued registration certificate No. 2876 dated 5.9.1979; however, fact remains that the Society was organised prior to the Act came into force and the agreements, ANNEXURE 'A', 'B' and Power of Attorney Annexure 'C' were executed in the early part of 1975. Section 20 of the Act contemplates that an application of a person who holds vacant land in excess of the ceiling limit is required to be considered. Therefore, in view of the decision of this Court in L.P.A No. 273/87, merely because the Society was not registered, the application cannot be rejected. As held by the Full Bench in the case of AVANTI ORGANISATION VS. COMP. AUTHORITY reported in 1989 GLR 586, if the application is ex facie not maintainable, it can be rejected even without hearing the party. In the instant case, as the Society was holding the land, that is to say that the Society was in possession of the land by virtue of an irrevocable power of attorney executed in favour of the Society prior to the Act came into force, the application could not have been rejected merely on the ground that the Society was not registered.

11. One has to also consider the definition of the word 'person' as prescribed in Sec. 2 (i) of the Act, which reads as under :-

- (i). "Person" includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not;

Thus, the section makes it clear that an association or body of individuals whether incorporated or not is required to be considered as a person. In our opinion, even if the argument of the State that the Society was not registered is accepted for the time being, even then it can be said that in view of sub-clause (i) of section 2 of the Act, the application was by an un-incorporated association or body of individuals. The word "incorporate" is to be understood in the sense of process of formation of a legal body with the quality of perpetual existence and succession [Law Lexicon]. In the real sense, the Society is, in the first place, a voluntary association of persons formed by members for their mutual rights protection and benefit. The same is to be regulated by byelaws. It is a body acting on behalf of all the members of the Society. From the definition, it is very clear that even if the process is pending for 'incorporation' by an association of person or body of individuals without the action having been culminated into a corporate body, the same shall be

considered as one unit. Incorporation is nothing but an action or process of forming into a community of the corporation. The New Shorter Oxford English Dictionary 1993 edition page 1342 explains 'incorporation' as under:-

"The action or process of forming into a community or corporation; A document which gives legal status to a corporation; ... An incorporated society or Company"

The Random House Dictionary of English language, Reprint 1977, explains as "1. to form into a corporation; 2. to form into a society or organisation.

12. The Act, considering the object, stipulated that the association of persons as a 'person' - irrespective of the fact whether such association is incorporated or not, for the purposes of the Act. If an Association of body of individuals is in possession of the land, then in that case, it will be considered as one unit. This aspect of the matter has not at all been noticed by the authority deciding the application under section 20 of the Act. Considering the definitions of "to hold" and "person", we are of the view that the State Government ought to have given an opportunity of hearing, and after hearing the appellant No.1, the State should have decided the application. The decisions which we have referred to hereinabove clearly contemplates that in a case like this, the applicant ought to have been heard.

13. It is in this background we are required to decide the appeal and we are of the opinion that the order in the form of letter dated 9.3.1983 at Annexure 'L' is required to be quashed and set aside.

14. This Court had an occasion to consider a case when the application is pending with the Government under section 20 of the Act, what is the nature of directions to be given (LPA No. 85 of 84 with LPA No. 86 of 84 decided by this Bench on 5.11.1998), following the decision of the Full Bench in the case of Avanti Organization (Supra) and the decision of a Division Bench of this Court in the case of SAMRATHBEN CHOKSHI vs. STATE OF GUJARAT in LPA No. 485 of 1984 in Special Civil Application No. 1735 of 1984 decided on 8.6.1983. This Court opined that proceedings initiated in respect of land upto the stage of Sec. 10 (2) of the Act should be left untouched. The prosecution of further process under the Act after the stage of section 10 (2) of the Act being dependent on the decision of the application under section 20 of the Act, could be commenced only after the

decision that may be rendered by the Government. In the result, the order passed by the learned Single Judge in Spl. C.A. No. 484 of 1984 is quashed and set aside. For the reasons recorded above, the order dated 9.3.1983 passed by the Industries Commissioner, Ahmedabad at Annexure 'L' and order dated 21.10.1983 passed by the Competent Authority & Deputy Collector, Surat, Annexure "L" are quashed and set aside, and in view of what we have stated hereinabove, the competent authority will be at liberty to proceed upto the stage of section 10 (2) of the Act; Further process under the Act after the stage of section 10(2) of the Act will depend upon the decision of the application under section 20 of the Act. It is directed that the State shall decide the application under section 20 of the Act submitted by the appellant No.1 strictly in accordance with law and the policy in conformity with the provisions of law. Accordingly, the State Government under section 20 of the Act shall dispose of the application under section 20 of the Act submitted by the appellant No.1-Society within a period of three months from the receipt of the writ.

The appeal is allowed accordingly. No order as to costs.

csm./ -----